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7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF WASHINGTON**

10 UNITED STATES OF AMERICA, )  
11 ) NO. 2:20-CR-00066-TOR  
12 Plaintiff, )  
13 ) SENTENCING  
14 ) MEMORANDUM  
15 vs. )  
16 )  
17 JOSE GARCIA-VILLA, )  
18 )  
19 Defendant. )  
20 )

21 JOSE GARCIA VILLA, through counsel, Robert M. Seines, submits the  
22 following Sentencing Memorandum:

23  
24 **1. Procedural Overview.** On October 6, 2020 Jose Garcia-Villa  
25 entered a guilty plea to Possession with Intent to Distribute 500 Grams or More  
of a Mixture or Substance Containing Methamphetamine, in violation of 21  
U.S.C. §841 (ECF 21 and 22).

1 Under the Plea Agreement the United States agreed that he should receive  
2 the maximum downward adjustments under the sentencing guidelines for  
3 acceptance of responsibility, and that Mr. Garcia-Villa may be eligible for a  
4 two-level safety valve reduction because of his criminal history score of 1, and  
5 other relevant factors in USSG 2D 1.1(b)(18). Having qualified for safety valve,  
6 the Court may also disregard the statutory mandatory minimum sentence  
7 pursuant to 18 U.S.C. §3533(f)(1)-(5).  
8

9 However, notwithstanding the downward adjustments, Mr. Garcia-Villa's  
10 guideline offense level is 33 because of the quantity of drugs at issue, and he is  
11 exposed to a final guideline range of 135 to 168 months. See; Presentence  
12 Investigation Report, ECF 29 at ¶ 159.  
13

14 Mr. Garcia-Villa is scheduled to be sentenced on January 5, 2021 (ECF  
15 22). He requests to Court to review his background, the facts of this case, and  
16 the authorities set forth below and impose a significantly lower sentence in  
17 accord with 18 U.S.C. § 3553(a)(2).  
18

19 **2. Facts.** The PSIR (ECF 29) outlines the facts of this case  
20 beginning at Part A, ¶ 9. Mr. Garcia-Villa was arrested on January 27, 2020 at a  
21 residence in Spokane. He lived near Yakima and had borrowed a vehicle from a  
22  
23

1 friend earlier that day. His own vehicle was broken down and he could not  
2 afford to repair it. He also needed to have another friend drive the car because  
3 Mr. Garcia-Villa's license was suspended. During their investigation, officers  
4 learned that Mr. Garcia-Villa and his friend drove from Yakima to Federal Way,  
5 then to Spokane. An individual in Federal Way took possession of the car and  
6 drove off and returned about a half hour later. This individual hid packages of  
7 Meth and Heroin inside the vehicle's trunk.  
8

9  
10 On January 30, 2020 law enforcement executed a search warrant on the  
11 vehicle and recovered 5.2 kilograms of Meth and 1.89 kilograms of Heroin from  
12 the vehicle.

13 **3. Sentencing Guidelines.** Probation has correctly calculated the  
14 total offense level under the sentencing guidelines at Level 33 after taking into  
15 account the weight of the substance per USSG §2D1.1, and the adjustments  
16 discussed above. ECF 29 ¶¶ 37 to 46.  
17

18 The weight of the controlled substances seized is the *single* factor with the  
19 most impact on Mr. Garcia's offense level of 33. It is because of the weight of  
20 the actual Meth and Heroin. The converted weight of the Meth places the drugs  
21 in the over 90 kilogram range of the Drug Quantity Table, USSG 2D1.1(c)(1).  
22  
23

1 This produces a base offense level of 38, which is reduced to 33 by the safety  
2 valve and accepting responsibility adjustments, and when combined with a  
3 Criminal History Category of 1, results in the Guideline range of 135 to 168  
4 months of imprisonment.<sup>1</sup>

5  
6 In contrast, if the weight of the Meth was less than 500 mg, which is at the  
7 opposite end of the Drug Quantity Table, the offense level would be 12, which  
8 results in a guideline range of 10 to 16 months – less than 1/10<sup>th</sup> the time of  
9 imprisonment compared with an offense level of 33.  
10

11 The relationship between quantity and the increase in base offense level  
12 set forth in this part of the Guidelines has been questioned by courts and legal  
13 scholars.  
14

15 The usefulness of the Guidelines' Loss Table that is used in fraud cases  
16 was aggressively challenged by Judge Rakoff in *United States v. Adelson*, 441  
17 F.Supp.2d 506 (S.D.N.Y. 2006). Judge Rakoff stated:

18 As many have noted, the Sentencing Guidelines, because of their  
19 arithmetic approach and also in an effort to appear “objective,” tend  
20 to place great weight on putatively measurable quantities, such as  
21 the weight of drugs in narcotics cases or the amount of financial  
22 loss in fraud cases, without, however, explaining why it is

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23 <sup>1</sup> See PSIR, ECF 29 at ¶159.

1 appropriate to accord such huge weight to such factors. *See*  
2 *generally*, Kate Stith & José A. Cabranes, *Fear of Judging:*  
3 *Sentencing Guidelines in the Federal Courts* 69 (1998).

4 441 F.Supp.2d at 509.

5 ...

6 While one might theorize as to why the Sentencing Commission  
7 promulgated each of these additions, “the [Sentencing]  
8 Commission has never explained the rationale underlying *any* of its  
9 identified specific offense characteristics, why it has elected to  
10 identify certain characteristics and not others, or the weights it has  
11 chosen to assign to each identified characteristic.” *Stith &*  
12 *Cabranes, supra*, at 69. Here, their combined effect—an added 20  
13 points under the Government’s approach—ill-fits the situation of  
14 someone like Adelson. It represents, instead, the kind of “piling-  
15 on” of points for which the guidelines have frequently been  
16 criticized (*cite to record omitted*).

17 Id at 510-11.

18 ...

19 What this exposed, more broadly, was the utter travesty of justice  
20 that sometimes results from the guidelines’ fetish with abstract  
21 arithmetic, as well as the harm that guideline calculations can visit  
22 on human beings if not cabined by common sense.

23 Id at 511.

24 We concede that the weight of illegal drugs is a logical factor in  
25 measuring the potential harm to the community, however Judge Rakoff correctly  
emphasizes that the bare guidelines are not derived from a transparent  
calculation of all of the variables that should be considered and weighed to come

1 up with an accurate assessment of the offense characteristics in a particular case.

2       However, this Court is well familiar that the calculation of a sentence  
3 under the Sentencing Guidelines is just the starting point to determine an  
4 appropriate and just sentence. We suggest there is history and other factors  
5 surrounding Mr. Garcia-Villa and this offense that justifies a sentence far below  
6 the guideline range.  
7

8       **4. The Court can find reasons justifying a sentence outside the**  
9 **guideline range by considering the factors enumerated in 18 U.S.C. §**  
10 **3553(a).**

11       The sentencing guidelines are just the “starting point in the initial  
12 benchmark” in determining a sentence. *Gall v. United States*, 552 U.S. 38, 128  
13 S.Ct. 586, 596 (2007). “The guidelines are not the only consideration, and the  
14 district judge should consider all of the 3553(a) factors to fashion the  
15 appropriate sentence.” *Id.*  
16

17       The sentencing court is not required to see “extraordinary circumstances”  
18 in order to impose a sentence outside the guidelines. *Id.* at 495-96. The district  
19 court judge has had the opportunity to become familiar with the case and the  
20 defendant, and, as compared with the Sentencing Commission, is “therefore, in a  
21 superior position to find the facts and judge there import under Section 3553(a)  
22  
23

1 in each particular case.” *Kimbrough v. United States*, 552 U.S. 85, 128 S.Ct.  
2 558, 570 (2007).

3 18 U.S.C. § 3553(a) provides factors to be considered in imposing a just  
4 sentence that is “sufficient, but not greater than necessary” to reflect the  
5 seriousness and deter others from committing the crime, protect the public from  
6 future crimes by the defendant, and to promote respect for the law. Following is  
7 a discussion of these factors:  
8

9  
10 **a. The nature and circumstances of the offense and the history  
and characteristics of the defendant.**

11 The Presentence Report (PSI) references factors that the Court should  
12 consider. Notably, the PSI relates that when he was 3 years old, his mother took  
13 Mr. Garcia-Villa to Mexico to live with his grandmother to enable her to work  
14 in the fields back in the USA. While there he was subjected to poverty, hard  
15 physical labor and even physical abuse when he was unable to lift heavy bags of  
16 fruit. (PSIR at ¶¶ 95-97). He also reports that he was sexually assaulted by a  
17 family member while he was there. (PSIR at ¶108).  
18

19 His mother brought him back to Yakima when he was 9, and life was  
20 much better. He attended school on a regular basis and helped his mother in the  
21 orchards. However, his mother was living with a man who physically abused her  
22

1 and inflicted trauma on Mr. Garcia-Villa. He got into a physical fight with the  
2 man when he was about 15 and his mother ended her relationship with the man  
3 after that. (PSIR at ¶¶ 97-98).

4 His sister, Angelica Villa, was interviewed by Probation and provided an  
5 insightful look into Mr. Garcia-Villa's history and present character. Ms. Villa  
6 states that he struggled to adjust when he returned to the USA. He went to  
7 school and played sports, but he had difficulty in school and, "got into things he  
8 shouldn't do." (PSIR at ¶104).

9 He began drinking alcohol and later on started using cocaine, and in  
10 recent years, Meth. (PSIR at ¶107).

11 Generally, the Guidelines foreclose any downward departure for lack of  
12 youthful guidance. U.S.S.G. § 5H1.2 ("Lack of guidance as a youth and similar  
13 circumstances indicating a disadvantaged upbringing are not relevant grounds  
14 for imposing a sentence outside the applicable guideline range."). However, the  
15 Ninth Circuit and other circuit courts have held that a downward departure may  
16 be appropriate based on extreme childhood abuse. See, *United States v. Roe*, 976  
17 F.2d 1216, 1218 (9th Cir.1992); *United States v. Pullen*, 89 F.3d 368, 372 (7th  
18 Cir.1996); *United States v. Clark*, 8 F.3d 839, 845–46 (D.C.Cir.1993); *United*

1 *States v. Vela*, 927 F.2d 197, 199 (5th Cir. 1991); *United States v. Deigert*, 916  
2 F.2d 916, 919 (4th Cir.1990); and *United States v. Rivera*, 192 F.3d 81, 84–85  
3 (2d Cir. 1999). This Court should consider a downward departure or variance  
4 based on Mr. Garcia Villa’s abuse suffered as a child.

5  
6 **b. The need for the sentence imposed to reflect the seriousness of**  
7 **the offense, promote respect for the law, provide just punishment for the**  
8 **offense - to afford adequate deterrence to criminal conduct, and to protect**  
9 **the public from further crimes of the defendant.**

10 In Part F of the PSIR, Probation addresses §3553(a) and observes -- while  
11 Mr. Garcia has a past criminal history that began at age 18 - he has only  
12 accumulated one criminal history point. (PSIR at ¶ 156). Probation also notes  
13 that, “Mr. Garcia-Villa has a long-standing addiction to alcohol and controlled  
14 substances for which he has had little exposure to treatment.” (PSIR at ¶158).

15 Mr. Garcia-Villa’s medical history reveals other serious mental health  
16 issues that could have made him susceptible to being pushed or coerced into  
17 committing the instant offense. Medical records from Spokane Jail include a  
18 Washington Department of Corrections offender psychological profile that  
19 indicates that he had a listed intelligence quotient (IQ) of 71, and a “strong  
20 potential for being victimized.” DOC recommended that he be segregated from  
21 predatory inmates and that he receive additional testing to determine if “some  
22  
23

1 level of mental retardation or developmental disability may be present.” (See  
2 PSIR at ¶ 115).

3       The DOC assessment is congruent with Angelica’s observations and  
4 assessment of her brother. She states that Mr. Garcia-Villa is a good person and  
5 a hard worker, but he has associated with “negative influences” and others have  
6 taken advantage of his kindness. And, his conduct in this case exposed their  
7 family to danger [by others involved in this criminal conduct]. (PSIR at 105 and  
8 ¶109).  
9

10  
11       However, Mr. Garcia-Villa has been close to his six children and has  
12 maintained contact with them up to the present time.

13       And perhaps -- Mr. Garcia’s response to the question in the June 28, 2020  
14 NaphCare Mental Health Screening; “How does the inmate feel about his  
15 current situation?” sums up his entire criminal history and predicts his law  
16 abiding future. The answer: “*I did a bad thing, I feel bad and have to pay*  
17 *consequences.*”  
18

19  
20       **c.       the defendant with needed educational or vocational training,**  
21 **medical care, or other correctional treatment in the most effective manner.**

22       The Presentence Investigation Report is replete with observations that Mr.  
23 Garcia-Villa likes to work and is a hard worker. He continues to work now as a

1 janitor in the Kittitas Jail and in the kitchen at the Spokane County Jail. He  
2 hopes to obtain vocational training to become an electrician, carpenter, and/or  
3 welder while in BOP custody.

4 Mr. Garcia would also benefit enormously from the supervision and  
5 resources available to BOP for substance abuse evaluation and treatment and  
6 also the evaluations suggested by Washington DOC to assess and provide  
7 coordinated medical and psychological treatment.  
8

9 To this end, we request the Court exercise its discretion under 21 USC §  
10 862 and maintain Mr. Garcia-Villa's eligibility for federal benefits, including  
11 SSI and Medicaid after he is released from BOP custody.  
12

### 13 14 15 16 **RECOMMENDATION**

17 Based on the facts in the record and the above memorandum, Jose Garcia-  
18 Villa asks the Court to follow the joint recommendation of the United States and  
19 Mr. Garcia-Villa.  
20

1 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of December, 2020

2  
3 s/ Robert M. Seines, #16046  
4 Attorney for Jose Garcia-Villa  
5

6  
7 **CERTIFICATE OF SERVICE**

8 I hereby certify that on December 29, 2020, I electronically filed the  
9  
10 foregoing with the Clerk of the Court using the CM/ECF System which will  
11 send a copy of such filing to the following: Caitlin Baunsgard, Assistant United  
12 States Attorney.  
13

14  
15 s/ Robert M. Seines, #16046  
16 ROBERT M. SEINES  
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